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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,782	02/08/2002	James D. Webb	P-8712.02	2705

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EXAMINER

MALLARI, PATRICIA C

ART UNIT	PAPER NUMBER
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3736

11

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,782

Applicant(s)

WEBB ET AL.

Examiner

Patricia C. Mallari

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is a final rejection. The rejections of claims 1-32 from the previous Office action have been maintained.

Claim Objections

Claims 1, 2, 4-6, 8, 13, 14, 16, 19, and 22-30 are objected to because of the following informalities:

each instance of "requests" should be replaced with "at least one request" in each of line 8 of claim 1 and line 2 of claim 4;

at the end of line 1 of claim 2, "is" should be deleted;

on line 2 of claim 2, "requests" should be replaced with "the at least one request";

each instance of "decrypted requests" should be replaced with "at least one decrypted request" in each of line 2 of claim 5, line 2 of claim 6, and line 2 of claim 8;

on line 3 of claim 13, "the request" should be replaced with "the plurality of requests";

on line 3 of claim 14, "requests" should be replaced with "the requests";

each instance of "request" should be replaced with "at least one request" in each of lines 4, 5, and 7 of claim 16, line 1 of claim 19, line 1 and line 2 of claim 22, line 1 of claim 23, line 1 and line 3 of claim 24; line 1 and line 3 of claim 25, line 4, line 5, and line 12 of claim 26; line 1 of claim 27

each instance of "the encrypted request" should be replaced with "the at least one encrypted request" in each of line 1 of claim 23, line 8 of claim 26, lines 1-2 and line 3 of claim 28; lines 1-2 and line 3 of claim 29;

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"the request" should be replaced with "the at least one encrypted request" on each of line 10 and line 11 of claim 26;

on line 2 of claim 27, "a request;" should be replaced with "the at least one request.";

on line 10 of claim 30 "is also verifies" should be replaced with "also verifies".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13-19, 22-27, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of US Patent No. 6,168,563 to Brown ('563). Snell teaches a system 100 in which a server 102 receives at least one request to modify the behavior of an implantable medical device 105 (col. 5, lines 29-33; col. 5, line 56-col. 6, line 15). A clinician creates the request at a first time. The system 100 also includes a monitor 104 that receives the request from the server 102 and transmits the request to the implantable medical device 105 at a second selected time (col. 6, lines 2-5). A bi-directional communications system 107 communicatively couples the server 102 and the monitor 104. Snell teaches the physician sending the request through the server 102 to the monitor 104, but lacks a programmer through which the physician creates the request.

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However, Brown '563 teaches a system comprising a programmer 62, through which a clinician may create a request (message/instructions) and transmit the request to a server 54 for storage and eventual transmission to the user's monitor 12 (col. 16, line 55-col. 17, line 15). During operation, the clinician may also transmit an authorization code to the server 54 that identifies the clinician as authorized to submit requests (col. 16, lines 20-23). Therefore, it would have been obvious at the time of invention to combine the system of Brown '563 with the system of Snell, since Snell teaches a system in which a server is capable of receiving a request from a clinician, and Brown '563 describes an appropriate system for transmitting such a request. The combination would additionally maintain appropriate safety levels for patients being treated with the network programmer.

With regard to claims 3 and 4, the bi-directional communication system provides a secure communication link between the server and the monitor, including encryption (col. 7, lines 41-54 of Snell).

With regard to claim 5, the monitor 104 updates the implantable medical device 105 using a telemetry system 120, where a telemetry system 120 between an external monitor and an implantable medical device inherently uses radio frequency (col. 6, lines 33-36 of Snell).

Claims 11, 12, 20, 21, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell in view of Brown '563, as applied to claims 1-10, 13-19, 22-27, and 30-32 above, and further in view of US Patent No. 6,440,068 to Brown et al. ('068). Snell, as modified, lacks a Virtual Private Network or Secure Socket Layer connection

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as the secure bi-directional communications system. However, Brown et al. '068 discloses that health data exchange may be transmitted in a secure manner via encryption or by technologies, such as secure socket layer (SSL) or virtual private networks (VPN) (col. 4, lines 49-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use SSL or VPN as part of the security measures in Snell, as modified by Brown '563, since the system of Snell, as modified, includes any appropriate means as security measures and data integrity checks and Brown et al. '068 teaches SSL and VPN as such appropriate means. This combination would further ensure appropriate safety levels for patients being treated with the network programmer.

Response to Arguments

Applicant's arguments filed 1/13/04 have been fully considered but they are not persuasive.

The applicants argue that the examiner ignored properly recited limitation because of the use of the word "adapted". However, the rejections made in the previous Office action stand even with the removal of the term "adapted" from the claims. At no point did the examiner ignore recited limitations of the claims. The examiner has delineated, in the rejections of both the previous Office action and the current Office action, how the applicants have failed to distinguish the claims of the instant application from the combinations of references provided.

The applicants cite that Snell fails to read on the claims of the instant application because, in the system of Snell, the clinician utilizes the programmer 104 to generate

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commands and requests and not the server 102 as asserted. However, Snell recites "The network server 102 . . . , subject to the physicians control, sends programming commands to the implantable medical devices 105 via the network programmers 104" (col. 6, lines 1-5). In the system of Snell in view of Brown ('563), the physician clearly may use the server to provide a request to a monitor (network programmer 104), which, in turn, provides the request to the implantable medical device.

The applicants further argue that Snell recites a "programmer 104" rather than a "monitor" and that the monitor and programmer of the instant application are distinct element. Regardless of the name given to the element, the "network programmer 104" of Snell, in view of Brown ('563) accomplishes the function of the monitor of the instant application, by receiving the request from the server and transmitting it to the implantable medical device. A difference in name fails to distinguish the network programmer of Snell in view of Brown ('563) from the monitor of the instant application. Furthermore, in the combination of Snell with Brown ('563), the programmer and monitor *are* presented as distinct elements. The network programmer 104 (cited in Snell, col. 5, lines, 5, 14, etc.) corresponds to the monitor of the instant application and the computer 62 (cited in Brown '563, col. 16, lines 57, 60, etc.) corresponds to the programmer of the instant application.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,720,770 to Nappholz et al.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (703) 605-0422. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ERIC F. WINAKUR
PRIMARY EXAMINER